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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-122662-13
Date: July 17, 2013

LEGEND

$$\underline{X} =$$
H =
$$\underline{W} =$$
Trust =D1 =D2 =

Dear _____ :

This letter responds to a letter dated May 10, 2013, and subsequent correspondence, submitted on behalf of X requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X is a corporation that made an election to be treated as a subchapter S corporation. All of the stock in X was community property held by Trust, a grantor trust described in § 1361(c)(2)(A)(i) of which H and W were the deemed owners.

W died on D1. Relative to W's share of X stock, Trust qualified under § 1361(c)(2)(A)(ii) as an eligible shareholder for two years from W's date of death. However, Trust continued to hold the X stock after the two-year period. As a result, X's S corporation election terminated on D2, the day after the two-year period following W's death. According to X, Trust qualifies as an electing small business trust ("ESBT"), but its trustee made no ESBT election.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments, consistent with the treatment of X as an S corporation, as may be required by the Service.

LAW AND ANALYSIS

Section 1361(c)(2)(A)(ii) provides that for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be a shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT may be a shareholder.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or

termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's election to be treated as an S corporation terminated on D2, after the two-year period following W's death. We also conclude that the termination constituted an inadvertent termination within the meaning of § 1362(f). Accordingly, X will be treated as continuing to be an S corporation from D2, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). In addition, Trust will be treated as an ESBT from D2, and thereafter, provided the trustee of Trust files an ESBT election for Trust with the appropriate service center, effective D2, within 120 days of the date of this letter. A copy of this letter should be attached to that election.

This ruling is contingent on X and all its shareholders treating X as having been an S corporation for the period beginning on D2, and thereafter. Accordingly, X's shareholders must include their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, we are sending a copy of this letter to X's authorized representative.

Sincerely,

/s/

Richard T. Probst
Senior Technician Reviewer
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes